

In all cases the Court may order any reasonable sum for the expenses of the Commission, to be paid into Court by the party at whose instance, or for whose benefit, the Commission is issued.

All the provisions of the Code regarding the summoning of witnesses and production of documents, apply to the attendance of witnesses and the production of documents before a Commission. Where parties interested neglect to appear before the Commissioner he may proceed *ex parte*. (Section 400.)

### § 3.—*Suits in Special Cases—Pauper Suits.*

Where a person cannot afford to pay the stamp (Court-fee) for a plaint, he may apply to sue "in formâ pauperis." Certain kinds of suits cannot be so brought. (Section 402.)

## SECTION VIII.—GOVERNMENT SUITS.

### § 1.—*Suits against Government or Public Officers.*

I have already explained that forest officers are by law protected against a civil suit for anything done by them in their official capacity under the Forest Act<sup>1</sup>. This would protect them both in their personal character (according to the usual principle that public officers cannot be rendered privately liable for official acts), as also in their official character.

But apart from such special protection, it is obvious that claims of a public nature may be either against the Government as a body (as for example, where a person claims to be proprietor of an area of land, which Government also claims), or it may be against some officer of Government in his public capacity for doing, or for refusing to do, some official act. The special rules of procedure in such cases are found in Chapter XXVII of the Code (section 416 *et seq.*), and with this the Forest Officer will do well to be familiar in somewhat more detail than with the rest of the Act.

<sup>1</sup> In some places where the Act is not in force there may be some legal question on this matter. But it is not necessary to go into detail here. Special advice will have to be taken in such cases.

By the "Act for the better government of India" (1858), the "Secretary of State for India in Council" may sue and be sued as representing Government. And consequently all suits brought by or against Government are to be brought in this name, and there is no occasion to enter any further name, description, or place of abode. (Section 418.)

§ 2.—*Summons how served against Government.*

If there is a Government Pleader in any Court, he is the agent of Government for receiving processes against Government. Where there is not, the Deputy Commissioner or the Collector is the representative or agent of the Secretary of State.

When Government is thus sued, the summons to answer *must allow such time* as may be necessary to admit of the usual reference through the proper official channels, and the issue of the necessary orders in the case: the Court has discretion to extend this time. (Section 420.) The Government Pleader or Advocate, or whoever it is that appears, ought to be accompanied by some person able to answer any material question relating to the suit: or if not, the Court has power to require the attendance of such person. (Section 421.)

§ 3.—*Against a Public Officer.*

Where the suit is against a public officer<sup>2</sup>, and the defendant desires to make a reference to Government before answering, he may apply to the Court to allow him time to get orders. (Section 423.)

§ 4.—*Preliminary Notice.*

If a suit against Government or against a public officer lies at all, under no circumstances can it be brought without giving two

<sup>2</sup> This term is specially defined in the beginning of the Code. Forest Officers are public officers within this definition, and so are almost every conceivable kind of Civil and Military (Commissioned) Officers, Judicial, Police, Revenue, Excise, Customs, or other departmental subordinates. It will be instructive to the student to compare this definition with that in the Penal Code (section 21); he will find them identical except that Nos. 5 and 6, (jurymen, assessors and arbitrators) are left out; but it would seem that an arbitrator is a public officer as he comes under one of the other clauses.

months' previous notice in writing. If the suit is against Government the notice is addressed to the Secretary to Government, or the Collector of the district. If the suit is against a public officer the notice is given to him (to be delivered personally or left at his office). The notice in writing must state the name and address of the intending plaintiff and the cause of action. And every plaint filed must set forth that this required notice has been duly sent. (Section 424.)

In the case of a public officer, Government will usually undertake the defence (unless clearly the officer has acted arbitrarily or in bad faith, or in some way made himself liable, so that there is no reason why Government should undertake the defence).

The Government Pleader (which by definition includes any officer appointed to the duty, where there is no permanent Government Pleader) is furnished with authority to appear and answer the plaint, and he will apply to the Court which thereon will note his authority to appear, in the register. (Section 426.)

If the Government pleader does not apply under Section 426, the suit will go on like a private suit, except that the defendant is not liable to arrest, nor his property to attachment otherwise than in execution of a decree. (Section 427.) The Court is also bound to exempt the defendant from personal appearance, if he satisfies the Court that he cannot be absent from his duty without detriment to the public service.

#### § 5.—*Decree against Government.*

All decrees given against Government or a public officer regarding a public act, must contain an order that the decree shall be satisfied in a certain time. If it is not so, the Court reports the case for the order of the local Government. Execution is not to issue on any decree unless it remains unsatisfied for the period of three months computed from the date of such report. (Section 429).

#### § 6.—*Provincial Rules about Government Suits.*

In every province it will be found that circular orders have been issued regarding Government suits, which will require careful atten-